

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DARNETTA JACKSON,

Plaintiff,

V.

CITY OF DALLAS, ET AL.,

Defendants.

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No. 3:19-cv-2470-G-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Darnetta Jackson brings this *pro se* action against the City of Dallas and others, appearing to allege privacy and civil rights violations. *See* Dkt. No. 3. Her action was referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b)(1) and a standing order of reference from Senior United States District Judge A. Joe Fish. The Court granted her leave to proceed *in forma pauperis* (“IFP”). And the undersigned enters these findings of fact, conclusions of law, and recommendation that the Court should dismiss Jackson’s complaint as factually frivolous and/or for failure to state a claim without prejudice to her filing an amended complaint within a reasonable time to be set by the Court.

Jackson’s full factual allegations are:

working with the City to some degree, no privacy include my home or outside the home; not giving an option or choice if I want the position being able to assist with moving traffic or should I say directing. This has caused problems with my vision, foot pains, abdominal pains, chest pains, neck pains, back pains, having problems with my sleeping, my own way of thinking being of a part of something not knowing your position. Children being taken away from agreement parties, made in the court

system, without even being contact about it. Not being able to see my youngest two Children. Something consistently stealing blood from me and my children withing giving person. Never knew that what the law. Way of living & the things that you do being compared to a game, "Bets."

Dkt. No. 3 at 1.

A district court may summarily dismiss a complaint filed IFP if it concludes that the action:

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B).

An action is frivolous if it lacks an arguable basis in either law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Brewster v. Dretke*, 587 F.3d 764, 767 (5th Cir. 2009) ("A claim may be dismissed as frivolous if it does not have an arguable basis in fact or law."). And a complaint is without an arguable basis in law if it is grounded upon an untenable, discredited, or indisputably meritless legal theory, including alleged violations of a legal interest that clearly does not exist. *See Neitzke*, 490 U.S. at 326-27; *Berry v. Brady*, 192 F.3d 504, 507 (5th Cir. 1999). Claims within a complaint lack an arguable basis in fact if they describe "fantastic or delusional scenarios," *Neitzke*, 490 U.S. at 327-28, and such claims may be dismissed

as factually frivolous only if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional. As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.

Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) (citations and internal quotation marks omitted).

Dismissal for failure to state a claim “turns on the sufficiency of the ‘*factual* allegations’ in the complaint.” *Smith v. Bank of Am., N.A.*, 615 F. App’x 830, 833 (5th Cir. 2015) (per curiam) (quoting *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam); emphasis added by *Smith*). And the Federal Rules of Civil Procedure “do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.” *Johnson*, 574 U.S. at 11.

Indeed, to survive dismissal under the framework of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), a plaintiff need only “plead facts sufficient to show” that the claims asserted have “substantive plausibility” by stating “simply, concisely, and directly events” that he contends entitle him to relief. *Johnson*, 574 U.S. at 12 (citing FED. R. CIV. P. 8(a)(2)-(3), (d)(1), (e)); see also *Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019) (“Determining whether a complaint states a plausible claim for relief” is ‘a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’” (quoting *Iqbal*, 556 U.S. at 679; citing *Robbins v. Oklahoma*, 519 F.3d 1242, 1248 (10th Cir. 2008) (“[T]he degree of specificity necessary to establish plausibility and fair notice, and therefore the need to include sufficient factual allegations, depends on context.”))).

That rationale has even more force in this case, as the Court “must construe the pleadings of *pro se* litigants liberally.” *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir.

2006).

Jackson's current complaint lacks a logical set of facts that supports a claim for relief. And to the extent that her claims are not factually frivolous, she has so far failed to allege facts that support a plausible claim for relief. *See, e.g., Inclusive Communities Project*, 920 F.3d at 899 ("Where the well-pleaded facts of a complaint do not permit a court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" (quoting *Iqbal*, 556 U.S. at 678 (quoting, in turn, FED. R. CIV. P. 8(a)(2)))). But, because she is proceeding *pro se*, she should be allowed to file an amended complaint to state her best case after being advised of the pleading standards set out above.

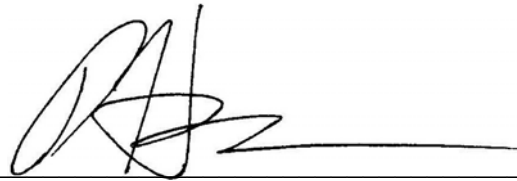
Recommendation

The Court should dismiss Plaintiff Darnetta Jackson's complaint as factually frivolous and/or for failure to state a claim without prejudice to her filing an amended complaint within a reasonable time.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by

reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: October 22, 2019

A handwritten signature in black ink, appearing to read 'D. Horan', is written over a horizontal line.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE